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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MANUEL GODINEZ,

12 Plaintiff,

13 vs.

14 JESUS REYES, et al.,

15 Defendants.
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CASE NO. 15cv2438-LAB (BLM)

ORDER OF REMAND

17 This unlawful detainer action was filed in state court. Elisa Flores, who is not named
18 as a defendant in the complaint, but who filed a prejudgment claim of right to possession,
19 removed this action. The notice of removal identifies federal question as the basis for this
20 Court's exercise of jurisdiction. The notice of removal argues that Defendants were
21 authorized to withhold rent because of Plaintiff's violation of federal housing law.

22 It is well-established that federal question jurisdiction only exists where the federal
23 question appears on the face of the complaint. *Phillips Petroleum Co. v. Texaco, Inc.*, 415
24 U.S. 125, 127–28 (1974) (*per curiam*). Defenses or counterclaims based on federal law do
25 not confer federal jurisdiction. See *Caterpillar Inc. v. Williams*, 482 U.S. 386, 399 (1987);
26 *Takeda v. Nw. Nat'l Life Ins. Co.*, 765 F.2d 815, 821–22 (9th Cir.1985). Here, the complaint
27 raises only state-law claims. Even if the Court were allowed to consider Flores' claim, it also
28 arises under state law; federal law does not create her claim, nor does her claim require

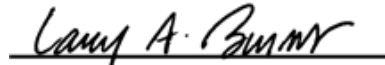
1 resolution of a substantial federal question. See *Empire Healthchoice Assurance, Inc. v.*
2 *McVeigh*, 547 U.S. 677, 689–90 (2006).

3 It is clear the parties are not diverse, nor does the amount in controversy support
4 diversity jurisdiction. Nor is any other basis for this Court's exercise of jurisdiction apparent.
5 This case must therefore be remanded. See 28 U.S.C. § 1447(c).

6 Flores' motion for leave to proceed *in forma pauperis* is **DENIED AS MOOT** and this
7 action is **REMANDED** to the Superior Court of California for the County of San Diego.

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9 **IT IS SO ORDERED.**

10 DATED: November 3, 2015

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12 **HONORABLE LARRY ALAN BURNS**
13 United States District Judge
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